

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

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ePLUS INC.,)
Plaintiff,) Civil Action No.
v.) 3:09-CV-620 (REP)
LAWSON SOFTWARE, INC.,)
Defendant.)
-----x

CONFIDENTIAL - SOURCE CODE

Videotaped Deposition of PATRICK NIEMEYER
Washington, DC
Wednesday, February 8, 2012
9:55 a.m.

Job No.: 17904

Pages: 1 - 319

Reported by: Lee Bursten, RPR, CRR

EXHIBIT

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CONDUCTED ON WEDNESDAY, FEBRUARY 8, 2012

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1	MR. FORMAN: Objection, form.	11:02:31
2	BY MR. LO:	11:02:35
3	Q Let me rephrase the question. I think	11:02:35
4	we're talking past each other. Assume in RSS that a	11:02:38
5	user has added an item into what is the My Cart on	11:02:45
6	the screen. Do you have that assumption in mind?	11:02:49
7	A Say that again.	11:02:52
8	Q Yes. Assume that we're talking about RSS,	11:02:53
9	and that the user has selected an item from the	11:02:56
10	left-hand side of the screen, clicked on the Add Item	11:02:58
11	link, and added that item to the My Cart that shows	11:03:01
12	up on the right-hand side of the user screen. Do you	11:03:05
13	have that in mind?	11:03:09
14	A Yes.	11:03:10
15	Q Assuming the user has done nothing else	11:03:10
16	other than add the item into the My Cart, has that	11:03:13
17	item been transferred to the Requisition Database in	11:03:16
18	RSS?	11:03:18
19	A It has not been placed into the Requisition	11:03:22
20	Database yet, no.	11:03:25
21	Q And eventually in RSS, it can be placed in	11:03:27
22	the Requisition Database, correct?	11:03:31

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1	Shopping Cart Cookie file; do you recall that?	12:08:48
2	A Yes, I do.	12:08:52
3	Q That's a file that's stored on what we	12:08:53
4	referred to as the server side of the software,	12:08:56
5	correct?	12:08:59
6	A That's correct.	12:09:00
7	Q And it is a file that is different from	12:09:00
8	what you have been referring to as the Requisition	12:09:07
9	Database, correct?	12:09:08
10	A Well, I believe we agreed that we were	12:09:11
11	referring to -- what we were referring to as the	12:09:14
12	Requisition Database included the REQ header and	12:09:16
13	REQLINES tables in the database. And it is not --	12:09:18
14	the Shopping Cart Cookie file is neither a database	12:09:21
15	table nor one of those tables. So yes, it is	12:09:23
16	different.	12:09:26
17	Q And you understand that there was a	12:09:26
18	Shopping Cart Cookie file in RSS, correct?	12:09:31
19	A Yes.	12:09:34
20	Q In fact, you describe it at some length in	12:09:34
21	your reports in the contempt proceedings, correct?	12:09:37
22	A I'm not sure to what length, but -- how you	12:09:39

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1 respect to what? It serves the same role in the 12:10:41
2 system. I can describe it. It's a file that holds 12:10:43
3 the list of items the user has selected prior to 12:10:44
4 requisition creation. 12:10:48

5 Q Well, my original question to you was 12:10:58
6 whether the functions of the Shopping Cart Cookie 12:11:01
7 file changed from RSS to RQC. And your response was 12:11:04
8 they are substantially identical. And I just want to 12:11:07
9 figure out why you qualified it by saying 12:11:09
10 substantially. 12:11:11

11 A Let me put it this way. The role of the 12:11:12
12 Shopping Cart Cookie file is identical in RSS and 12:11:15
13 RQC. 12:11:17

14 Q Okay. 12:11:17

15 A It is a file. It doesn't really have 12:11:18
16 functionality per se. 12:11:20

17 Q Are the source code calls to the Shopping 12:11:21
18 Cart Cookie file identical in RSS and RQC? 12:11:32

19 MR. FORMAN: Objection, form. 12:11:34

20 A There are no -- I don't mean to be picky, 12:11:36
21 but there are no calls to the cookie file. It's a 12:11:40
22 file. It's produced, read. 12:11:42

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1	A	Yes.	12:17:35
2	Q	And in RSS, that portion of the code is	12:17:35
3		triggered by the user adding an item to the cart,	12:17:38
4		correct, the My Cart?	12:17:43
5	A	Yes. When the user selects an item to be	12:17:45
6		added to the cart, it is triggered.	12:17:47
7	Q	And in your view, in RQC, when a user	12:17:49
8		selects an item to be added now into the Requisition	12:17:53
9		Line, the same piece of code is executed, correct?	12:17:56
10	A	Yes, I believe that's correct.	12:18:00
11	Q	And so in your view, that portion of the	12:18:01
12		code has not changed from RSS to RQC, correct?	12:18:05
13	A	Yes, I believe that's correct.	12:18:08
14	Q	Were you aware of this piece of code that	12:18:12
15		you cite in paragraph 57 in the underlying	12:18:17
16		proceedings when you reviewed the Lawson software?	12:18:22
17	A	At the time of the trial or at the time of	12:18:25
18		the initial expert report?	12:18:27
19	Q	At the time of trial.	12:18:31
20	A	Yes, I'm sure I was.	12:18:32
21	Q	You would agree there's no mention of the	12:18:33
22		Shopping Cart Cookie file in the expert report that	12:18:36

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1	you prepared in the underlying trial, correct?	12:18:38
2	A That's correct. I included things that I	12:18:40
3	thought were important to support the report and	12:18:42
4	excluded things I did not think were salient.	12:18:46
5	Q Okay. And so you thought that the Shopping	12:18:48
6	Cart Cookie file was not salient, and therefore, it	12:18:53
7	was excluded from your expert report in the	12:18:55
8	underlying trial, correct?	12:18:57
9	A It was elided from my description because I	12:18:57
10	don't describe every single step required to get from	12:19:01
11	point A to point B in every single system.	12:19:03
12	Q But you attempted to describe the steps	12:19:08
13	that you deemed to be relevant to what the judge and	12:19:11
14	the jury had to consider in the underlying trial,	12:19:12
15	correct?	12:19:16
16	A In my initial expert report, I described	12:19:16
17	the steps required to place an item into the Shopping	12:19:19
18	Cart and to subsequently create a requisition and	12:19:25
19	generate one or more purchase order items from that.	12:19:27
20	I don't believe any of that has changed. I'm not	12:19:31
21	sure exactly what you're asking me.	12:19:33
22	Q Well, I'm asking you why there was no	12:19:34

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1	these contempt proceedings?	12:30:23
2	A I did, in my -- in response to Lawson's	12:30:24
3	arguments related to the Shopping Cart Cookie file, I	12:30:29
4	was asked to respond to arguments that they made, and	12:30:36
5	I did.	12:30:41
6	Q What arguments in particular are you	12:30:41
7	referring to?	12:30:43
8	A I'm sure there were several that touched on	12:30:44
9	it, but the one that comes to mind is the contention	12:30:47
10	that Lawson removed the order list by virtue of	12:30:49
11	having removed the Shopping Cart. That required a	12:30:53
12	response discussing what if anything was removed in	12:30:58
13	some detail from the Shopping Cart data structures.	12:31:06
14	And I subsequently documented those data structures	12:31:09
15	and how -- what if anything changed.	12:31:13
16	Q In your contempt proceedings reports, there	12:31:28
17	were references to what is called a Cart Object. Are	12:31:31
18	you aware of that?	12:31:36
19	A Yes, I am.	12:31:36
20	Q Can you describe generally what the Cart	12:31:37
21	Object is that you're describing in your reports?	12:31:39
22	A It's a client side JavaScript object used	12:31:40

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1	in the Shopping Cart functionality.	12:31:45
2	Q Can you be more specific about how it is	12:31:53
3	used in what you call the Shopping Cart	12:31:55
4	functionality?	12:31:57
5	A To be precise, I would characterize it as a	12:31:57
6	view-related object. It's a buffer or a cache of	12:32:01
7	information about items to be displayed on the	12:32:07
8	screen.	12:32:11
9	Q Right. And to be more precise, in RSS, as	12:32:11
10	we talked about earlier, there is a section of the	12:32:15
11	screen called the My Cart, correct?	12:32:19
12	MR. FORMAN: Objection to form.	12:32:20
13	A There's a label on the screen that says "My	12:32:21
14	Cart."	12:32:23
15	BY MR. LO:	12:32:23
16	Q Right. And the items that are displayed	12:32:23
17	under the My Cart in RSS are -- the information for	12:32:25
18	those items are stored in the Cart Object, correct?	12:32:29
19	A It depends on how technical you want to be.	12:32:34
20	It's an HTML, it's a web application, so technically,	12:32:36
21	there are any number of levels at which that	12:32:41
22	information is stored, ranging from a document object	12:32:46

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1	A	Yes.	13:33:43
2	Q	And for the Shopping Cart Cookie file, I	13:33:43
3		already asked you, you were certainly aware of the	13:33:46
4		existence of the Shopping Cart Cookie file by the	13:33:50
5		time of trial in the underlying proceedings basically	13:33:53
6		in January of 2011, correct?	13:33:56
7	A	Yes.	13:33:58
8	Q	At the time you prepared your expert report	13:33:59
9		in May 2010, were you aware of the Shopping Cart	13:33:59
10		Cookie file which is described in your contempt	13:34:02
11		report?	13:34:05
12	A	At the time I prepared my initial expert	13:34:06
13		report, yes.	13:34:08
14	Q	Same question for the Cart Object. I think	13:34:10
15		we've already discussed that. Certainly at the time	13:34:13
16		of trial, in January 2011, you were aware of the	13:34:15
17		function of the Cart Object in the Lawson software,	13:34:19
18		correct?	13:34:22
19	A	I'm sure I had reviewed it, yes.	13:34:22
20	Q	And at the time that you prepared your	13:34:24
21		initial expert report in the May 2010 time frame,	13:34:26
22		were you also already aware of the Cart Object?	13:34:30

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1	A	I'm sorry, I'm missing the sequence here.	13:34:35
2		Could you repeat the question?	13:34:37
3	Q	Sure. At the time that you prepared your	13:34:38
4		initial expert report in the underlying proceedings,	13:34:40
5		and I believe that's in the May 2010 time frame, were	13:34:44
6		you already aware of the Cart Object that is now	13:34:46
7		described in the contempt report?	13:34:49
8	A	I'm sure I was.	13:34:50
9	Q	And you mentioned before the lunch break	13:34:56
10		that in this proceeding, it was your decision and not	13:34:58
11		the lawyers' decision to raise the existence of the	13:35:03
12		Shopping Cart Cookie file, correct?	13:35:06
13		MR. FORMAN: Objection to form.	13:35:07
14	A	The decision about what was necessary to	13:35:11
15		answer arguments or to document functionality was	13:35:18
16		mine. I'm sure I took guidance on what to include in	13:35:20
17		the report and what not to include.	13:35:24
18		BY MR. LO:	13:35:25
19	Q	Fair enough. Do you recall when you made	13:35:25
20		that decision to discuss the Shopping Cart Cookie	13:35:27
21		file?	13:35:30
22	A	Other than approximately the time frame	13:35:30

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1	in the deposition of Patrick Niemeyer. Going off the	14:10:35
2	record at 14:10.	14:10:38
3	(Discussion off the record.)	14:12:44
4	THE VIDEOGRAPHER: Here begins tape 3 in	14:13:51
5	the deposition of Patrick Niemeyer. We are back on	14:14:02
6	the record at 14:14.	14:14:05
7	BY MR. LO:	14:14:25
8	Q Before we took the break, I was talking to	14:14:25
9	you about your testimony at trial relating to the	14:14:29
10	Shopping Cart and the REQLINE table. Do you recall	14:14:32
11	that, sir?	14:14:35
12	A Yes, I do.	14:14:35
13	Q And you gave me your understanding that the	14:14:36
14	assumption you had was that the reason that the	14:14:44
15	REQLINE table -- let me rephrase the question. It	14:14:47
16	was your assumption in providing this testimony at	14:14:53
17	trial that the Shopping Cart items ended up in the	14:14:56
18	REQLINE table as a result of a checkout by the user;	14:15:00
19	is that correct?	14:15:07
20	MR. FORMAN: Objection to form.	14:15:07
21	A I don't think it's appropriate to	14:15:08
22	characterize it as an assumption. I think I'm	14:15:12

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1	simply -- it was simply documenting a simple case and	14:15:15
2	did not offer alternatives to that case. Again,	14:15:20
3	there are any number of things the user could have	14:15:24
4	done in that intervening -- you know, during that	14:15:26
5	process that I didn't document.	14:15:29
6	BY MR. LO:	14:15:31
7	Q Sure. Let me rephrase my question, then,	14:15:32
8	to make sure I don't mischaracterize you. When you	14:15:34
9	were testifying at trial about the Shopping Cart and	14:15:38
10	the REQLINE, what you were documenting was an	14:15:39
11	instance in which the user hit the "Checkout" button	14:15:48
12	which resulted in the items in the Shopping Cart	14:15:50
13	going into the Requisition Database, correct?	14:15:54
14	MR. FORMAN: Objection to form.	14:15:57
15	A I was simply trying to describe the process	14:15:59
16	by which the user added items to the Shopping Cart	14:16:03
17	and subsequently generated a requisition. The steps	14:16:06
18	were designed -- the steps that I discussed were	14:16:09
19	designed to bolster the jury's understanding of the	14:16:12
20	process. They were not exclusive of other things	14:16:15
21	that happened in the system; as I've said, there's a	14:16:19
22	limit to the level of detail that one can go into in	14:16:21

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1	it is in RQC; is that correct?	14:24:45
2	A With the -- notwithstanding the removal of	14:24:47
3	the "Save" button and the automation of that trigger,	14:24:50
4	I believe the Save operation is identical. In fact,	14:24:53
5	notwithstanding that, I believe everything we've	14:24:57
6	discussed today is identical. We haven't really	14:24:59
7	gotten to anything that's changed yet.	14:25:02
8	Q Is the treatment of errors the same, in	14:25:03
9	your view, in RSS and RQC?	14:25:05
10	MR. FORMAN: Objection to form.	14:25:07
11	A With respect to everything I testified	14:25:13
12	about at trial, everything I understand to be at	14:25:15
13	issue, it is identical. There were some minor	14:25:16
14	changes to the behavior on the client's side with	14:25:18
15	respect to errors.	14:25:20
16	BY MR. LO:	14:25:21
17	Q Well, let me stop you there. In the expert	14:25:21
18	report you prepared in the underlying case, do you	14:25:28
19	recall any discussion of errors entering --	14:25:32
20	A No, I did not document the error handling	14:25:36
21	case.	14:25:40
22	Q In the underlying trial, in your testimony	14:25:40

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1	to the judge and jury, did you have any testimony	14:25:44
2	regarding the error handling case?	14:25:47
3	A No, I don't believe I did.	14:25:54
4	Q I take it in preparing the report in the	14:25:57
5	May 2010 time frame, you were aware of the error	14:25:58
6	handling case in RSS, correct?	14:26:03
7	A Certainly to some extent, yes. I probably	14:26:04
8	had not studied it as much as currently because it	14:26:07
9	was not something I testified about.	14:26:09
10	Q Okay. And certainly we were talking about	14:26:10
11	the requisition.js file, which invokes the	14:26:15
12	Commit/Save, which then leads to the error checking.	14:26:19
13	The requisition.js file was a file you looked at in	14:26:22
14	preparing your expert report in May of 2010, correct?	14:26:25
15	A Yes, it was.	14:26:28
16	Q And of course, in your -- strike that	14:26:28
17	question.	14:26:40
18	A My discussion of the error handling in my	14:27:04
19	contempt expert report and rebuttal, to the extent	14:27:09
20	that it's discussed there, derived from responding to	14:27:11
21	Lawson's arguments with respect to the removal of the	14:27:16
22	Shopping Cart file. That is why I am rebutting the	14:27:18

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1	MR. LO: No further questions.	18:02:48
2	MR. FORMAN: No further questions.	18:02:49
3	THE VIDEOGRAPHER: This ends the deposition	18:02:51
4	of Patrick Niemeyer. We are off the record at 18:02.	18:02:53
5	(Signature having not been waived, the	
6	deposition of PATRICK NIEMEYER was concluded at	
7	6:02 p.m.)	
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ACKNOWLEDGMENT OF DEPONENT

I, PATRICK NIEMEYER, do hereby
acknowledge that I have read and examined the
foregoing testimony, and the same is a true, correct
and complete transcription of the testimony given by
me and any corrections appear on the attached Errata
sheet signed by me.

(DATE)

(SIGNATURE)

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CERTIFICATE OF SHORTHAND REPORTER-NOTARY PUBLIC

I, Lee Bursten, the officer before whom the foregoing deposition was taken, do hereby certify that the foregoing transcript is a true and correct record of the testimony given; that said testimony was taken by me stenographically and thereafter reduced to typewriting under my direction; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 10th day of February, 2012.

My commission expires June 30, 2014.



Lee A. Bursten

NOTARY PUBLIC IN AND FOR

THE DISTRICT OF COLUMBIA